

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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VICTORIA MURNANE, et al.

V.

Plaintiffs.

Case No. 2:13-cv-01088-MMD-PAL

ORDER

(Mot Reconsider – Dkt. #151)

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, et al.,

Defendants.

Before the court is Plaintiff's Motion for Reconsideration (Dkt. #151) filed July 28, 2015. The court has considered the motion, Sealed Appendix of Exhibits (Dkt. #152), LVMPD's Opposition (Dkt. #166), and Plaintiffs' Reply (Dkt. #179).

Plaintiffs request reconsideration of this court’s Order (Dkt. #137) granting in part and denying in part Plaintiffs’ Motion to Compel (Dkt. #96). The order was entered at a hearing on several motions held on June 30, 2015. Reconsideration is requested pursuant to Fed. R. Civ. P. 54(b). Plaintiffs argue that the documents LVMPD produced in conformance with the order granting a portion of the motion to compel “reveal new evidence which gives rise to the inference either that Defendant LVMPD’s previous document search was even less adequate than they previously admitted, or they actually concealed evidence from Plaintiffs.” Plaintiffs therefore ask that the court reconsider its order denying the motion to compel, and compel production of all documents from 2000 to the present which refer or relate to sexual misconduct, whether harassment, abuse, or other misconduct, that an officer of Defendant LVMPD is alleged to have made against any member of the public, except for those complaints arising from individuals housed at the Clark County Detention Center.

1 Plaintiffs argue reconsideration is merited because of new evidence not previously
2 disclosed by Defendant LVMPD and not previously available to the Plaintiffs. The late
3 production of additional documents concerning Defendant Norman and LVMPD's internal
4 affairs investigation deprived Plaintiffs of the opportunity to conduct additional discovery
5 concerning two other women who reported Defendant Norman engaged in a similar pattern of
6 misbehavior. The produced documents also reveal that there may have been other victims whose
7 identities LVMPD has not yet revealed, although Plaintiffs acknowledge that it is possible
8 LVMPD is not aware of the identities of other victims. The documents also reveal there are
9 possibly as many as three LVMPD officers who were witnesses "to Norman's sexual abuses
10 whose identities were not previously known to Plaintiffs."

11 LVMPD opposes the motion pointing out that Plaintiffs are not requesting an opportunity
12 to conduct discovery of the witnesses disclosed in the documents they describe. Rather,
13 Plaintiffs renew their demand that LVMPD provide all documents concerning incidents dating
14 back to 2000 pertaining to any LVMPD officer which the court previously denied. Plaintiffs
15 have no interest in the discovery they assert they were precluded from conducting, but are using
16 it as a back door to acquire unrelated information the court has denied them from obtaining.
17 LVMPD also argues that the motion was not timely filed within fourteen days of decision as
18 required by Rule 72(a) and LR IB 3-1. Rule 54(b) deals with judgments and does not apply.
19 The motion for reconsideration merely rehashes prior demands for relief.

Plaintiffs reply acknowledges that although Rule 72(a) and LR 3-1 provide a mechanism for the district judge to revise, amend or modify a magistrate judge's order the court has inherent authority to revise its own order. The documents the court compelled LVMPD to produce indicate it did not adequately search for responsive documents, and Plaintiffs are not asking that the court reopen discovery, only that it revisit its order regarding Internal Affairs documents sought dating back to 2000.

DISCUSSION

The Federal Rules of Civil Procedure do not contain a rule allowing a motion to reconsider. However, district courts have the inherent power to revise, correct and alter

1 interlocutory orders at any time prior to entry of the final judgment. *See, e.g., City of Los
 2 Angeles Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 888 (9th Cir. 2001); *Sch. Dist.*
 3 *No. 5 v. Lundgren*, 259 F.2d 101, 105 (9th Cir. 1958). Reconsideration is appropriate if the
 4 district court: (1) is presented with newly discovered evidence; (2) has committed clear error or
 5 the initial decision was manifestly unjust; or (3) there has been an intervening change in control
 6 and law. *Nunes v. Ashcroft*, 375 F.3d 805, 807–08 (9th Cir. 2004) (quoting *School District No.*
 7 *1J v. ACands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)). The Ninth Circuit has also held that
 8 “other, highly unusual, circumstances” may warrant reconsideration. *A Canvas Inc.*, 5 F.3d at
 9 1263.

10 However, motion for reconsideration should be denied when the movant fails to establish
 11 any reason justifying relief. *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985).
 12 Additionally, a motion for reconsideration is not an opportunity to re-litigate the same issues and
 13 arguments on which the court has already ruled. *W. Shoshone Nat. Council v. United States*, 408
 14 F.Supp 2d 1040, 1058 (D. Nev. 2005) (citation omitted). Disagreement with the court’s decision
 15 does not entitle the litigant to reconsideration. *See, e.g., Backland*, 778 F.2d at 1388, *Merozoite*
 16 *v. Thorp*, 52 F.3d 252, 255 (9th Cir. 1995).

17 Plaintiffs’ motion for reconsideration is based on Rule 54(b) which governs judgments on
 18 multiple claims or involving multiple parties. The rule has no application here. Plaintiffs had
 19 fourteen days to file objections to the court’s order deciding a pretrial discovery motion that was
 20 not dispositive of the parties’ claims or defenses. Fed R. Civ. P. 72(a) & LR IB 3-1(a).

21 The Complaint (Dkt. #1) in this case was filed June 19, 2013. The original discovery
 22 plan and scheduling order was entered September 27, 2013, and established a January 29, 2014,
 23 discovery cutoff. The parties applied for and obtained a stay of discovery while a motion to
 24 dismiss and sever was under submission. At a hearing conducted November 5, 2013, the court
 25 granted counsel’s proposed stipulation to stay, but directed them to file a proposed discovery
 26 plan and scheduling order within 14 days of decision allowing 120 days from decision to
 27 complete remaining discovery. *See Minutes of Proceedings* (Dkt. #36).

1 In an Order (Dkt. #37) entered March 17, 2014, the district judge granted LVMPD's
2 Motion to Dismiss, giving Plaintiffs leave to file a second amended complaint curing the noted
3 deficiencies. The motion to sever was denied as moot. A second amended complaint was filed
4 and the Defendants responded by filing a motion to dismiss the second amended complaint. A
5 Scheduling Order (Dkt. #43) was entered establishing a July 15, 2014 discovery cutoff with
6 related deadlines consistent with LR 26-1(e). The parties, once again, stipulated to stay
7 discovery or, alternatively, to extend discovery on June 18, 2014. *See* Stipulation (Dkt. #53).

8 At a hearing conducted August 7, 2014, the court extended the discovery cutoff until
9 March 10, 2015, and indicated that absent compelling circumstances and a strong showing of
10 good cause that discovery could not be completed within the extended time allowed, no further
11 extensions would be granted. The parties did not, however, complete discovery by March 15th
12 and applied for yet another extension. At the time Plaintiffs filed the Second Motion to Extend
13 (Dkt. #67) the parties had not even finished the process of negotiating a stipulated protective
14 order governing confidentiality of discovery disclosures, and no depositions had been taken. The
15 parties still needed to complete written discovery, resolve outstanding issues regarding the scope
16 of discovery, and seek court intervention, if needed, take and schedule depositions. LVMPD
17 filed a Joinder (Dkt. #71). The parties finally submitted a Stipulated Protective Order (Dkt. #68)
18 on February 18, 2015, which the court approved in an Order (Dkt. #72). The same day, the court
19 reluctantly granted the parties' request for a further extension of the discovery cutoff and
20 extended the discovery cutoff until May 11, 2015. *See* Order (Dkt. #72).

21 Plaintiffs' Motion to Compel (Dkt. #96) was filed after the discovery cutoff. It was set
22 for hearing on June 30, 2015, and promptly decided with other motions, including Defendant
23 LVMPD's Motion for a Protective Order (Dkt. #120). At the hearing, the court chastised
24 counsel for both sides for delaying completion of discovery until the eleventh hour. The parties
25 had reached an impasse concerning the documents Plaintiffs sought in the motion to compel
26 beginning in 2000 to the present, months prior. The parties had compromised a number of their
27 disputes and LVMPD had produced documents from 2008 to the present involving prior
28 incidents of sexual misconduct for incidents Internal Affairs had sustained. Documents were

1 redacted and did not include the names of the victims or names of the officers involved. The
2 court reviewed literally thousands of pages of moving and responsive papers and supporting
3 exhibits submitted with the motion to compel and motion for protective order which involved the
4 same dispute. The court granted Plaintiffs' partial relief, but denied Plaintiffs' request for
5 documents of all reported prior incidents of complaints of sexual misconduct for the entire
6 department (excluding detention personnel) from to 2000 to the present. LVMPD produced
7 documents regarding other such complaints dating back to 2008 in redacted form to avoid
8 motion practice.

9 The parties reached an impasse concerning the scope of appropriate discovery months
10 before the motion was filed, and a motion to compel was not filed until 10 days after the
11 expiration of the fourth discovery extension. Plaintiffs had not been diligent in pursuing
12 discovery during the extended time allowed. Although the court admonished counsel for
13 LVMPD for not disclosing relevant prior complaints about Defendant Norman earlier, LVMPD
14 had turned the information over to its counsel. A paralegal and associate lawyer had both
15 reviewed the documents and failed to identify them for production until shortly before the cutoff.
16 Additionally, Plaintiffs also served supplemental disclosures on the last day of the extended
17 discovery cutoff disclosing 19 new witnesses, 35 new exhibits and a computation of damages for
18 the first time. In short, both sides were not sufficiently diligent in meeting their disclosure and
19 discovery obligations within the extended time allowed in this case.

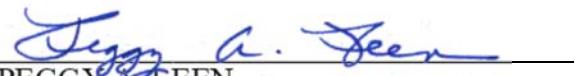
20 Plaintiffs now ask the court to revisit the decision denying LVMPD to produce the same
21 extremely broad category of documents dating back to 2000. However, as counsel for LVMPD
22 correctly points out, the motion was not timely filed, and does not provide legal authority for
23 reconsideration. More significantly, Plaintiffs' motion to reconsider is not seeking targeted
24 discovery about the alleged victims and witnesses revealed in the additional documents LVMPD
25 produced when the court granted the motion to compel. Plaintiffs are not requesting an
26 opportunity to depose the additional two victims identified in supplemental documents, or the
27 LVMPD officers who were witnesses of other incidents involving Defendant Norman, whose
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1 identities were not previously known to Plaintiffs. Rather, Plaintiffs are seeking the same broad
2 category of documents dating back to 2000 which the court previously denied.

3 Plaintiffs had the opportunity to object to the court's order denying the request for these
4 same documents, but failed to timely do so within 14 days as required by Rule 72(a) and LR 3-1.
5 Plaintiffs have not even cited the appropriate standard for a motion to reconsider, and have not
6 met their burden establishing a basis for reconsideration. Accordingly,

7 **IT IS ORDERED** that the Motion for Reconsideration (Dkt. #151) is **DENIED**.

8 DATED this 25th day of August, 2015.

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10 
11 PEGGY A. LEEN
12 UNITED STATES MAGISTRATE JUDGE
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